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**DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE**

**IMPLEMENTATION OF ELECTRONIC FILING AND STATUS OF
PROTESTS**

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document advises the public that following completion of test procedures under the National Customs Automation Program, the electronic filing and status of protests is now operational in all service ports of Customs. The document also sets forth the results of the concluded test, describes the current operation of the electronic protest program, and invites the public to provide comments on an ongoing basis regarding the program.

FOR FURTHER INFORMATION CONTACT:

For operational or policy issues: Millie Gleason, Office of Field Operations (202-927-0625).

For protest system or automation issues: Steve Linnemann, Office of Information and Technology (202-927-0436).

SUPPLEMENTARY INFORMATION:**BACKGROUND**Statutory and regulatory test procedures

The National Customs Automation Program (NCAP) is contained in sections 411-414 of the Tariff Act of 1930, as amended (19 U.S.C. 1411-1414). The NCAP is described in section 411(a) as an automated and electronic system for processing commercial importations that includes, as one of its planned components, the electronic filing and status of protests. The NCAP in section 413(b) requires the development of an implementation plan for each planned component, the testing of each planned component to assess its viability, the evaluation of each planned component to assess its contribution to the goals of the NCAP, and the transmission of the implementation plan, the testing results, and an evaluation report to the House Committee on Ways and Means and the Senate Committee on Finance. Section 413(b) further provides that a planned NCAP component may be implemented on a permanent basis if at least 30 days have passed after transmission of the implementation plan, testing results and evaluation report to the two Congressional committees.

Regulatory standards regarding NCAP testing are set forth in '

101.9(b) of the Customs Regulations (19 CFR 101.9(b)) and include a requirement of publication of notices in the **Federal Register** and in the Customs Bulletin both prior to implementation of a test (for purposes of inviting public comments on any aspect of the test and informing the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants) and after completion of a test (to describe the results of the test).

On January 30, 1996, Customs published in the **Federal Register** (61 FR 3086) a notice announcing a plan to conduct a test regarding the electronic filing of protests, involving the use of transaction sets within the Automated Broker Interface (ABI) portion of the Customs Automated Commercial System (ACS). The test would allow the electronic filing of, and the electronic tracking of the status of, the following:

- \$ Protests against decisions of Customs under 19 U.S.C. 1514;
- \$ Petitions or claims for refunds of customs duties or corrections of errors requiring reliquidation pursuant to 19 U.S.C. 1520 (c) and (d); and
- \$ Interventions in an importer's protest by an exporter or producer of merchandise from a country that is a party to the North American Free Trade Agreement under ' 181.115 of the

Customs Regulations.

That January 30, 1996, notice stated that the test would be implemented at selected ports, outlined the eligibility criteria for voluntary participation in the test, including test participation application procedures and the basis for participation selection, and stated that the final results of the test would be published as provided in ' 101.9(b) of the Customs Regulations. The notice further provided that the test would run for approximately six months commencing no earlier than May 1, 1996, and prescribed a deadline of February 29, 1996, for the submission of public comments concerning any aspect of the test and for contacting Customs for the purpose of participating in the test.

On December 31, 1996, Customs published in the **Federal Register** (61 FR 69133) a notice announcing an extension of the electronic protest filing test through April 1997. This notice stated that the test was currently operational with regard to 6 of the 17 entities (importers, customs brokers, legal firms and sureties) that volunteered to participate in the test and that 8 ports were originally selected for the test. The notice further stated that while the test would not be opened to new participants at that time, Customs was considering expanding the test to include up to 7 additional ports.

The notice also invited comments from the public concerning any aspect of the test.

On September 24, 1997, Customs published in the **Federal Register** (62 FR 50053) a notice announcing both an extension of the electronic protest filing test through December 1997 and an expansion of the test to encourage new participants. This notice stated that Customs anticipated that this NCAP component would be available to all interested parties by January 1998. The notice also solicited public comments concerning any aspect of the test.

Test results

Following conclusion of the test, Customs on December 17, 1999, submitted an evaluation report, entitled "Electronic Filing and Query of Protest Test," to the House Committee on Ways and Means and the Senate Committee on Finance as required by 19 U.S.C. 1413(b). The test results reflected in that report are described below.

As of February 12, 1999, a total of 3,861 filings were made during the test, involving 15,277 associated entries. Of those 3,861 filings, 860 involved protests under 19 U.S.C. 1514, 103 involved petitions under 19 U.S.C. 1520(c), and 2,898 involved claims under 19 U.S.C. 1520(d). Again, as of February 12, 1999, among the 3,861 filings, 478 had been approved, 614 had been denied in full, 29 had

been denied in part, 230 had been denied as untimely, 2,156 remained open, 235 were in suspended status pending the outcome of requests for internal advice or applications for further review or court action, and 119 had been withdrawn.

For purposes of satisfying the test evaluation requirement of 19 U.S.C. 1413(b), a user satisfaction survey was conducted. To this end, the external group of trade community users participated in a Structured Group Interview (SGI) and the internal group of Customs users participated in a questionnaire.

A. External group

On October 1, 1997, the Protest Team (which consisted of personnel from various Customs offices and a representative of the National Customs Brokers and Forwarders Association of America) conducted the SGI with the test participants in Washington, DC. A representative of the Office of Planning and Evaluation, experienced in the SGI technique, acted as moderator/facilitator. The group compiled random lists of positive and negative factors and then, by polling, eliminated some and prioritized those remaining:

1. Positives:

- \$ No need to physically deliver paper; more efficient.
- \$ Easier to get status of protest.

\$ Easier to file when time is short.

\$ Better standardization of filing:

-Fewer errors, and

-Edits provide check of information submitted.

2. Negatives:

\$ Recap status query report is non-informational.

\$ Cannot file 520(a) electronically.

\$ Attorneys have no electronic access to liquidation information.

\$ Electronic format does not include a filer's contact person.

\$ Filer has to retype narrative when multiple protests are filed on the same issue.

3. Resolution:

It was decided that the recap query could not be made more informational without causing it to take on the character of the full file query.

The Protest Team has recommended that the Office of Field Operations and the Office of Information and Technology review the ABI query capabilities now available to other filers to determine which might be made available to law firms. It has also informed the Office of Field Operations that interest was expressed in filing other actions electronically.

Those filers who deem it desirable to identify a contact will include the contact person's name and telephone number within the narrative portion of the electronic filing.

The narrative portion, containing the statement of the nature and justification for the objection to the protested Customs decision, is a required element of a protest (see 19 CFR 174.13, contents of protest) and therefore cannot be waived. However, the task of duplicating it for use in multiple protests or petitions can be accomplished efficiently by using word processing software, such as Word Perfect or MS Word, to compose and edit it and then cut and paste it into the protest for transmission to Customs.

B. Internal group

During the month of December 1998, the Protest Team conducted a survey of Customs users. A representative of the Office of Planning and Evaluation acted as consultant on development of the survey. Prior to issuing the survey to all users, it was administered to a group of twelve import and entry specialists at six of the test ports as

an assessment group. Results from the assessment group were used to make the final version of the survey. Administration of the survey was facilitated by electronic protest coordinators at the service ports. Completed surveys were returned to the Protest Team for evaluation.

Two hundred and seven persons, or about 77 percent of the survey recipients, responded. Of those, 63 percent participated in processing 19 U.S.C. 1514 protests, 22 percent took part in 19 U.S.C. 1520(c) petitions, and 12 percent took part in 19 U.S.C. 1520(d) claims.

Prior to the electronic protest procedure, Customs entry specialists were the primary users of, and had the most knowledge of, the ACS protest system. That system was merely a tracking device for paper protests and letters of petition. Import specialist involvement amounted to no more than changing team assignments.

The electronic protest system is both a tracking system and an electronic equivalent of the protest form (Customs Form 19) and of letters of petition or claim. Implementation took entry and import specialists to a new level of use and involvement. Fifty percent of those surveyed indicated that electronic protest had some impact on their job. While electronic protest requires them to perform new

tasks using ACS functions, 62 percent of those responding indicated that those new tasks were no more difficult than those performed using other ACS systems, and 10.6 percent indicated that the tasks were actually easier.

Concomitant to the development of electronic filing and query of protests, the Office of Field Operations included in its requirements a number of new elements to be used in processing both paper and electronic protests, petitions, claims, and interventions. Therefore, several survey questions asked about specific new system data fields and new regulatory procedures. For example, it was asked whether or not the user knew that a record could be flagged as NAFTA-related, that it could be indicated whether or not samples and hardcopy materials were associated with the filing, and that test summons and internal advice case numbers could be cited. Further, it was asked whether or not the user knew about three other related procedures whereby the protestant can challenge a denial of an application for further review and request that a denial of a protest be voided and whereby an exporter or producer from a country which is a signatory of NAFTA can intervene in an importer's 19 U.S.C. 1514 protest. A majority of entry and import specialists responded affirmatively, indicating that a good working knowledge of the

system is shared across all disciplines. The concept least familiar to them was that of the foreign exporter or producer of goods from Canada or Mexico intervening in the importer's protest under 19 CFR 181.115.

Some survey questions compared and contrasted electronic protests to non-electronic protests and elicited responses regarding possible benefits of the electronic protest system. Forty-one percent of those responding judged the content and quality of the narrative submitted via electronic protest or petition or claim to be as good as those received on a Customs Form 19, and an additional 6.8 percent indicated that the narrative is actually better than in the case of non-electronic protests. Twenty-five percent indicated that the narrative was worse and another 25 percent were uncertain.

A combined total of 48.8 percent of those surveyed either merely agreed or strongly agreed with the statement that Customs saves staff-hours at the front end of protest processing because it is not necessary to date and time-stamp the Customs Form 19 and return a copy to the protestant or his agent, and because all of the required information normally entered into ACS by the entry specialist is input by the protestant or his agent electronically via ABI. A combined total of 70 percent either merely agreed or strongly

agreed with the statement that Customs saves additional staff-hours and money at the back end of protest processing because it is not necessary to complete and mail the final copy of the Customs Form 19 for the 19 U.S.C. 1514 protest, or the final letter of approval or denial of the 19 U.S.C. 1520 petition or claim, to the protestant or his agent.

To support the implementation of this NCAP component, the Office of Information and Technology developed, and made available to Customs personnel, a computer-based training course. Various other means of training made available to users included classroom/computer lab training (either by local port officers or Headquarters personnel), local one-on-one training, and a revised ACS handbook. Ninety-two percent of the users surveyed had experience with one or more of these types of training. Additionally, each port was asked to name an electronic protest coordinator. In response to the question, "When you encounter a problem with the ACS electronic protest system... [whom do you contact?]," 57.9 percent said they check with local port personnel, 17 percent said they call ACS User Assistance, 9 percent said they call the Headquarters ACS officer, and 4 percent said they call the Office of Field Operations. No comments were received expressing an

inability to receive assistance with questions or problems regarding the electronic protest system.

CURRENT STATUS OF THE ELECTRONIC PROTEST PROGRAM

The electronic filing of protests is now operational in all service ports of Customs, and participation is open to any party in interest who qualifies under the program requirements. Accordingly, using the ABI system to send records to ACS, any qualified party at interest now can file the following electronically:

- \$ Protests against decisions of the Customs Service under 19 U.S.C. 1514;
- \$ Petitions for refunds of Customs duties or corrections of errors requiring reliquidation pursuant to 19 U.S.C.1520(c);
- \$ Claims for refunds of Customs duties when duty-free treatment was not claimed at the time of entry under NAFTA pursuant to 19 U.S.C. 1520(d); and
- \$ Interventions in an importer-s protest by an exporter or producer of merchandise from a country that is a party to the North American Free Trade Agreement under ' 181.115 of the Customs Regulations.

In addition, the system allows amendments and addenda after the initial filing to:

- \$ Apply for further review of a protest (if not requested at time of initial filing);

- \$ Assert additional claims or challenge an additional decision;
- \$ Submit alternative claims and additional grounds or arguments;
- \$ Request review of denial of further review of a protest;
- \$ Request accelerated disposition of a protest;
- \$ Request that the denial of a protest be voided; and
- \$ Withdraw the protest or petition or claim or intervention.

All of the above actions may be transmitted to Customs from a remote location anywhere in the United States. Filers receive notification of all review events, including the final decision, electronically. Additionally, filers may query their submissions at any time and share access to those records with designated third parties.

The query function provides the filer the option of receiving either an abbreviated status report (recap) on the protest, petition, claim or intervention, or a complete copy (full file) of the protest, petition, claim or intervention record. The shared access feature allows third parties to query protest records and to submit amendments and addenda.

The Client Representative Branch of the Office of Information and Technology will continue to market electronic protest to all interested parties. The Commercial Systems Branch of the Office of Information and Technology will continue to work with vendors and

filers in development, test and implementation of their software for electronic protest. The Commercial Compliance Division of the Office of Field Operations will continue to respond to operational and procedural questions and issues. Customs remains open to comments and suggestions from the international trade community regarding the design, conduct, and procedures of the electronic protest program.

Dated: August 8, 2000

Acting Assistant Commissioner
Office of Field Operations
John H. Heinrich